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IN THE
Supreme Court of the United States

OCTOBER TERM, 1948

No. ~~850~~ 106

MARY E. DOYLE, Widow, and ANNIE E. DOYLE, Mother,
of Bernard C. Doyle, deceased,

Petitioners,

vs.

THE LORD BALTIMORE HOTEL COMPANY, Employer,
and LIBERTY MUTUAL INSURANCE COMPANY,
Insurer,

Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND, AND
BRIEF IN SUPPORT THEREOF**

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vs.

THE LORD BALTIMORE HOTEL COMPANY, Employer,
and LIBERTY MUTUAL INSURANCE COMPANY,
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Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND**

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Petitioners, Mary E. Doyle, widow, and Annie E. Doyle, mother, of Bernard C. Doyle, deceased, respectfully pray that a writ of certiorari issue to review the decision of the Court of Appeals of Maryland rendered in this cause on April 26, 1949, reversing the judgment and decision of the Baltimore City Court and holding that the claims of petitioners for compensation for his death are barred.

A.

**SUMMARY STATEMENT OF THE
MATTER INVOLVED**

This case arises under the Workmen's Compensation act of Maryland, a compulsory statute, and involves petitioners' contention that the provisions of a subparagraph of the hernia subsection of that act, Article 101, §35(5), Code of P.G.L. of Md. (Flack's 1947 Supp.), as newly construed and applied by the Court of Appeals of Maryland to exclude their claims for compensation benefits for the death of their husband and son, respectively, an employee of respondent, The Lord Baltimore Hotel Company, unconstitutionally denied petitioners the equal protection of the laws in violation of the guarantee against such denial in the 14th Amendment to the federal Constitution.

In express reversal of its theretofore subsistent rule, in construction of the act, that accidental injury causing aggravation or acceleration of an existing hernia, with or without resulting strangulation, was compensable, the court below now reinterprets the subparagraph to provide that claims resting upon aggravation or acceleration of existing herniæ shall be compensable only when such aggravation or acceleration involves strangulation necessitating immediate operation, but wholly non-compensable when the aggravation or acceleration involves any other resulting condition or takes any other form, despite the fact that, as here, such other condition or form similarly necessitates immediate operation and is intrinsically identical to strangulation and equally as dangerous and potentially fatal.

By this new and unanticipated construction of the subparagraph in question as applicable to bar claims resting on aggravation of existing herniæ unless strangulated and

necessitating immediate operation, the state makes a classification of such claims without basis in reason and without relevancy to any purpose of the hernia subsection or the act as a whole. Consequently, it is contended, under the authorities of this Court, especially those involving and sustaining the constitutional validity of workmen's compensation statutes, that the classification is arbitrary and discriminatory and the subparagraph unconstitutional as construed and applied against petitioners who are, by the enforcement of the subparagraph to bar their claims, left without any remedy whatever against the employer, either under the act or at common law for its negligence. *State, use of Wilson v. North East Fire Brick Co.*, 180 Md. 367, 371:

Petitioners do not question the power of the court below to reinterpret the subparagraph and reverse its former construction, and to overrule its prior holding, nor do they seek review of the court's action in these respects. They contend, however, that the subparagraph as newly construed and applied to exclude their claims denied petitioners the equal protection of the laws, and that the unexpected reversal by the court below of its former rule of compensability of claims of this kind, constituting an unanticipated infringement of the federal right, fully sustains the seasonableness of the raising of the federal questions by motion for reargument of the cause below.

The matter involved herein is better viewed against the background of the Maryland act and its hernia subsection as well as the facts, sustaining, as they do, petitioners' position that the classification thus made is of matters between which there exists neither difference nor distinction.

From the time of the enactment of the first workmen's compensation act in Maryland in 1914 claims, as those here,

resting upon aggravation of existing herniæ were compensable under the general provisions of the act as other claims similarly resting on aggravation of existing disease or infirmity. Until the decision below herein the subparagraph in question had been construed to be perfectly consistent with that rule. In its original form, as added by amendment in 1931 to the act, the subparagraph imposed on a claimant of compensation for hernia the requirement of proof that the hernia did not exist prior to the injury for which he claimed compensation. By a liberalizing proviso added to the subparagraph in 1935 the requirement of proof that the hernia was not a pre-existing one was made inapplicable if, as the result of accidental injury, a pre-existing hernia became so strangulated that an immediate operation was necessary. The subparagraph took that form at the time of the injury here (with the exception of the addition of the word "strain" in 1945).

With the subparagraph in that form before it in 1940, the court below, in *G. L. Baking Co. v. Wickham*, 178 Md. 381, 388, on which petitioners relied below, reaffirmed the rule of compensability under the general provisions of the act of claims resting on aggravation or acceleration of pre-existing herniæ. It there said that an accident was compensable if it "either accelerated an existing rupture or developed a strangulated hernia." That case and its quoted language were cited with approval by the court below in *Bethlehem Steel Co. v. Zeigenfuss*, 1946, 187 Md. 283, 287. Yet in its decision below the Court of Appeals now for the first time construes the legislative intent to be, and the subparagraph to provide (18):*

"When the legislature, in 1935, specifically allowed recovery in cases involving the strangulation of pre-

* Unless otherwise indicated, figures in parentheses are page numbers of the transcript of the record.

existing herniæ, it excluded recovery for aggravation or acceleration of pre-existing herniæ, short of strangulation, by necessary implication."

Continuing, in reversing the rule of the *Baking Company* case, the court below said (18):

"* * * But insofar as the language quoted (from the *Baking Company* case) may be taken to imply that the acceleration of a pre-existing hernia, without strangulation, is compensable, we think it is inconsistent with the later holding in *Bethlehem Steel Co. v. Zeigensfuss*, *supra*, and we must decline to follow it."

The facts at bar, which are stipulated (4-8), establish for these claims a basis essentially and intrinsically identical to one of a claim the court below holds would be compensable under the subparagraph. Yet the court below excludes petitioners' claims from compensability, holding that although aggravation of a pre-existing hernia involving its strangulation and necessitating immediate operation is included and death resulting therefrom compensable, nevertheless, because the aggravation or acceleration of the deceased's existing hernia did not, as it could not, involve its strangulation, petitioners' claims are, by the subparagraph, relegated to the excluded class of claims resting upon aggravation of existing herniæ.

It is conceded and stipulated here that, arising out of and in the course of his extra-hazardous employment as a steam engineer by respondent The Lord Baltimore Hotel Company, the deceased on June 12, 1947, sustained an accidental injury aggravating or accelerating a pre-existing ventral hernia and necessitating an immediate operation for its correction. The deceased was employed by the Hotel Company in 1942. Following an operation for ulcers in 1943 there developed at the site of the incision a ventral

hernia whose size increased for a year or two and then remained quiescent. Before it was injured the hernia was neither painful nor at all disabling. June 12, 1947, while repairing an overhead leak in a ceiling line in the hotel, he slipped from a ladder and fell against a sump pump, striking it with his stomach and a portion of the hernia, thereby injuring his stomach and aggravating or accelerating his hernia so that it expanded and its size became "formidable". An immediate operation became necessary.

June 21, 1947, the deceased was operated on to correct his hernia and its aggravation caused by the accidental injury of June 12, 1947. He died from cardiac collapse a few minutes after the operation, and the court below held that his death was the natural and logical consequence of his accidental injury (16). The operation would not have been necessary but for his accidental injury of June 12, 1947. He was 58 years of age at the time of his death. Petitioners were wholly dependent upon the deceased for their support.

It is to be importantly noted that the nature and size of the existing hernia here and the absence of any sufficient amount of tissue or muscle surrounding it made its strangulation physiologically impossible.

B.

JURISDICTION

Petitioners seek a review by certiorari, pursuant to §1257(3) of Title 28, U.S.C., of a final judgment of the Court of Appeals of Maryland, the highest court of the state, rendered and passed April 26, 1949, when it finally disposed of, by overruling without opinion, petitioners' motion for reargument of the cause.

The state statute, the validity of which is drawn in question on the grounds of its repugnancy to and its infringement of rights secured by the equal protection clause of the 14th Amendment to the federal Constitution, is an unnumbered subparagraph of the subsection relating to hernia of the Workmen's Compensation act of Maryland, codified as Article 101, §35(5), Code of P. G. L. of Md. (Flack's 1947 Supp., p. 1929). The subparagraph (set out in full *infra*, pp. 11-12) was by the decision hereinbelow of the Court of Appeals newly construed to provide that claims resting upon aggravation of pre-existing herniæ shall be compensable only when such aggravation involves strangulation necessitating immediate operation, but wholly non-compensable when the aggravation involves any other resulting condition or takes any other form, albeit necessitating immediate operation and essentially identical to strangulation.

Petitioners' federally secured rights were not infringed until the decision of the Court of Appeals of Maryland which, by its opinion filed March 10, 1949, specifically reversed its previous construction of the workmen's compensation act and the subparagraph in question and, expressly and wholly unanticipatedly, overruled (18) its prior decision, *G. L. Baking Co. v. Wickham*, 1940, 178 Md. 381, 388, on which petitioners relied below, which had affirmed the compensability of claims resting upon aggravation or acceleration of pre-existing herniæ that did not strangulate. The decision of the Court of Appeals, wherein respondents were appellants, reversed a judgment of the Baltimore City Court, the court of first instance, and remanded the case to it with instructions to enter judgment affirming the finding of the Industrial Accident Commission of Maryland disallowing the claims of petitioners, the widow and mother, respectively, of the deceased, against his employer, the respondent The Lord Baltimore Hotel Company.

Before the Commission, where all claims for compensation under the act are originally heard and determined, petitioners were without counsel and no issue was there submitted and no determination made whether the death of the employee resulted from aggravation or acceleration of his pre-existing hernia and was, therefore, compensable under the general provisions of the act, or as to the applicability of the subparagraph to their claims as resting on such aggravation or acceleration. The claims were there tried and determined merely as for compensation for death under the hernia subsection of the act. The Commission found (2), on issues submitted by respondents, that the deceased sustained an accidental injury or strain arising out of and in the course of his employment, that he had a pre-existing hernia that did not become strangulated, that an immediate operation was necessary, and that his death was not the result of an accidental injury or strain arising out of and in the course of his employment. On these findings the Commission disallowed the claims (2).

On petitioners' appeal from that decision to the Baltimore City Court, as permitted by the act, Code, Article 101, §57, the case was submitted on stipulation and agreed statement of facts (4-8) to the trial court, sitting as a jury, who filed a memorandum in writing (9-14) holding the death compensable as any other resulting from aggravation or acceleration of pre-existing infirmity (13) and directing reversal of the decision of the Commission. Respondents' appeal to the Court of Appeals, likewise permitted by §57 of the statute, followed.

As stated, no federal right of petitioners was affected until the decision of the Court of Appeals, and consequently no federal question was raised or submitted to it in the original briefs or oral argument. Because that court's reversal of its previous construction of the act in the *Baking*

Company case was altogether unanticipated, petitioners' first opportunity for challenging the constitutional validity of the subparagraph as newly construed and to claim infringement of their rights under the federal Constitution was by their motion for reargument. This motion (19-86), permitted by Rule 43 of the Rules of the Court of Appeals of Maryland, was seasonably filed April 9, 1949, and raised and argued the federal questions here sought to be reviewed.

The motion for reargument was received and considered (87) by the court below but overruled (87) without opinion April 26, 1949. In these circumstances it is believed that the federal questions were timely raised and are reviewable here. *Saunders v. Shaw*, 244 U.S. 317, 320; *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 677-678; *American Surety Co. v. Baldwin*, 287 U.S. 156, 164; *Missouri ex rel. Missouri Ins. Co. v. Gehner*, 281 U.S. 313, 320; *Ohio v. Akron Metropolitan Park District*, 281 U.S. 74, 79; *Great Northern Ry. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 367; *Herndon v. Georgia*, 295 U.S. 441, 444.

C.

QUESTIONS PRESENTED

I. Do the provisions of the hernia subsection of the Workmen's Compensation act of Maryland allowing the recovery of compensation for claims resting upon aggravation or acceleration of pre-existing herniæ only where strangulation occurs and an immediate operation is necessary, while wholly excluding from compensation all other claims resting upon aggravation or acceleration of pre-existing herniæ and necessitating immediate operation but involving resulting conditions other than, yet equally as dangerous and potentially fatal as, strangulation, deny to claimants in the latter class the equal protection of the

laws in violation of their rights secured by the 14th Amendment to the federal Constitution?

II. Were petitioners, in the circumstances disclosed, denied the equal protection of the laws by the application, to bar their claims, of the provisions of the hernia subsection of the act limiting the compensability of claims resting upon aggravation or acceleration of pre-existing herniæ to those cases where strangulation occurs and immediate operation is necessitated?

D.

STATUTES INVOLVED

The Workmen's Compensation act of Maryland is codified as Article 101 of the Code of Public General Laws of Maryland. Its provisions effective at the time of the accidental injury here, June 12, 1947, are as set forth in Flack's 1947 Cumulative Supplement to the Annotated Code of Maryland, pp. 1891 to 1969, incl. The provisions involved are contained in §14, "Suit—Methods of Insurance", and in §35, "Claims and Compensation; Benefits." §35(5) embraces the provisions relating to claims for compensation for herniæ, including the subparagraph in question which is the third subparagraph in the hernia subsection and begins with the word "Second." The general provisions of the act requiring payment of compensation or benefits for death resulting from accidental injury are contained in §14 and in subsection (7) of §35.

The following are the pertinent provisions of §§14 and 35:

Suit—Methods of Insurance.

14. Every employer subject to the provisions of this Article, shall pay or provide as required herein compensation according to the schedules of this Article for the disability or death of his employee resulting

from an accidental personal injury sustained by the employee arising out of and in the course of his employment without regard to fault as a cause of such injury, except where the injury is occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty. Where the injury is occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty, neither the injured employee nor any dependent of such employee shall receive compensation under this Article.

The liability prescribed by the last preceding paragraph shall be exclusive, * * *.

Claims and Compensation; Benefits.

35. Each employee (or in the case of death his family or dependents) entitled to receive compensation under this Article shall receive the same in accordance with the following schedule and except as in this Article otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

* * *

(5) In all claims for compensation for hernia, compensation may be allowed only upon definite proof to the satisfaction of the Commission.

First. That there was an accidental injury causing hernia, arising out of and in the course of the employee's employment; or that the claimant sustained a hernia resulting from a strain arising out of and in the course of his or her employment.

Second. That the hernia did not exist prior to the injury or strain for which compensation is claimed; provided that if as the result of an accidental injury,

or as the result of a strain, arising out of and in the course of the employee's employment a pre-existing hernia becomes so strangulated that an immediate operation is necessary, the provision of this subparagraph requiring proof that hernia did not exist prior to the injury for which compensation is claimed shall not apply.

Third. That, anything in this Article respecting notice to the contrary notwithstanding, such injury or strain was reported to the employer within fifteen days next following its occurrence.

All hernia, inguinal, femoral or otherwise, so proven to be the result of such injury or strain, shall be treated in a surgical manner by operation whenever practicable. If death results from such operation, the death shall be considered as a result of the injury or strain, and compensation paid in accordance with the provisions of this section. In non-fatal cases, time loss only shall be compensated, provided, however, that in computing lost time there shall not be included any time lost from delay in the holding of a hearing when such delay shall have been occasioned at the request, or by the fault, of the claimant, unless it is shown by special examination that the injured employee has a permanent partial or permanent total or temporary total disability resulting from the operation. If so, compensation shall be paid in accordance with the provisions of this Article, with reference to permanent partial disability or permanent total or temporary total disability as the case may be.

In case the injured employee refuses to undergo an operation for the cure of the said hernia, he shall be allowed compensation for a period of seven and one-half ($7\frac{1}{2}$) weeks, and if it be shown to the satisfaction of the Commission that because of age or previous physical condition, it is considered unsafe for the employee to undergo such operation, such refusal may be excused by the Commission, in which event the employee shall be allowed compensation for the period

of actual disability resulting from such hernia, not to exceed fifty-two (52) weeks, and in either event such payments shall be in lieu of all benefits for or on account of disability or death resulting or alleged to have resulted from such injury.

* * *

(7) (Dependents) In case the injury causes death within the period of three years the benefits shall be in the amounts and to the persons following:

* * *

If there are wholly dependent persons at the time of death, the payment shall be sixty-six and two-thirds per centum of the average weekly wages, not to exceed, however, a maximum of Twenty Dollars per week, * * * and to continue for the remainder of the period between the date of death and no more than Five Hundred weeks after the date of injury and not to amount to more than a maximum of Seventy-five Hundred (\$7,500.00) Dollars nor less than a minimum of One Thousand (\$1,000.00) Dollars.

E.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. A provision of the Maryland Workmen's Compensation act, which "cannot be sustained except on the ground that it is a reasonable exercise of the police power of the state," *New York C. R. Co. v. White*, 243 U.S. 188, effecting the classification of claims resting upon a specified injury, aggravation of existing hernia, in a manner and to an extent not heretofore determined by this Court, has been directed by the Court of Appeals of Maryland to be enforced to preclude all recovery by the dependents of a deceased employee for his death which concededly resulted proximately from an accidental injury sustained in the course of extra-hazardous employment. The problems sought to be

justly settled by state workmen's compensation statutes, "affecting one of the most important social relations," *New York C. R. Co. v. White*, *supra*, call for definitive solution by this Court when they involve a palpable trespass over the boundary of permissible state action, especially when the evils at which these statutes were aimed are caused to be re-created by novel and invidious provisions of an exclusionary nature which have been allowed to creep into a state act. When, beginning more than thirty years ago, this Court in a series of cases, cited in the brief following, sustained the constitutional validity of state workmen's compensation laws, none of them contained a "hernia provision" or any exclusionary proviso resembling one. In no case since decided by this Court has there been any mention, much less a determination, of the constitutional boundary of state action in respect of provisions relating to claims for compensation for herniæ. If a state may, under the guise of effectuating the salutary purposes of its compensation statute, deny all right of recovery, both under such statute and at common law, for a death occurring in the circumstances admitted here, then the substantial rights of all employees under these acts are affected if not seriously jeopardized.

2. Moreover, the decision of the Court of Appeals of Maryland directing the enforcement of the subparagraph here drawn in question ignores that, as it is applied to discompensate petitioners, it is subject to constitutional defects which this Court in applicable decisions has held to be invalidating of state legislation. There is not here involved the validity of a hernia exclusionary provision of the usual type. The subparagraph which the Court of Appeals of Maryland sustained and gave effect to makes an arbitrary and discriminatory classification in the teeth of the salutary and inflexible rule of the decisions of this

Court that classification "must regard real resemblances and real differences between things and persons, and class them in accordance with their pertinence to the purpose in hand," *Truax v. Corrigan*, 257 U.S. 312, 338. Only Maryland, of forty-eight states having workmen's compensation or employers' liability statutes, has enacted hernia provisions under which, by means of a scheme of subclassification, the payment and withholding of compensation where aggravation or acceleration of existing herniæ are involved is made a matter of frivolity and caprice. The emasculatory result if not the purpose and mode of accomplishing the denial of recovery in these instances is reminiscent of that ensuing from the insidious processes by which were evolved the "fellow servant," "assumption of risk," "promise to repair," "simple tool" and other concepts and doctrines to whittle away the benefits intended by the federal Employers' Liability Acts. What has been done in the case at bar reflects but a minor variation of the same theme. Here, however, there has been total destruction of all rights. Maryland did not stop with the mere differentiation and classification of claims for compensation for herniæ. It singled out of the hernia class for special treatment claims resting upon aggravation of existing herniæ, and then further subdivided those claims into separate but wholly artificial subclasses, and arbitrarily and capriciously limited compensation to those involving technical strangulation and necessitating immediate operation, excluding all other claims although functionally and physiologically identical. In upholding and applying those provisions the Court of Appeals could find neither a real difference between the included and the excluded classes nor any relation between the subclassification and the purposes of the legislation. For there is none.

WHEREFORE, petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of Maryland, commanding that court to certify and send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record and of all proceedings in the case entitled and numbered on its docket, "The Lord Baltimore Hotel Company, Employer, and Liberty Mutual Insurance Company, Insurer, appellants, v. Mary E. Doyle, widow, and Annie E. Doyle, mother, of Bernard C. Doyle, deceased, appellees," No. 108, October Term, 1948, and that the judgment and decision of the Court of Appeals of Maryland in the case may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

PAUL BERMAN,
SIGMUND LEVIN,
THEODORE B. BERMAN,
Counsel for Petitioners.

Baltimore, Maryland,
June 6, 1949.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland (15-18) has not yet been reported in the official State Reports. It was filed March 10, 1949, and may be found in full in 64 A. 2d 557. The opinion of the Baltimore City Court (Sherbow, J.), the court of first instance, is appended hereto (9-14).

II.

JURISDICTION

Jurisdiction is invoked pursuant to §1257(3) of Title 28 of the United States Code, there being drawn in question the validity of provisions of the Workmen's Compensation act of Maryland on the ground of their repugnancy to and their infringement of rights specially set up and claimed under the equal protection clause of the 14th Amendment to the federal Constitution.

III.

STATEMENT OF THE CASE

A full statement of the case has been given under heading A in the petition for writ of certiorari, and for brevity is not repeated here. The facts are stipulated in writing (4-8).

IV.

SPECIFICATION OF ERRORS

The Court of Appeals of Maryland erred:

1. In sustaining and giving effect to the provisions of the hernia subsection of the Workmen's Compensation act of Maryland allowing the recovery of compensation for claims resting upon aggravation or acceleration of pre-existing

herniæ only where strangulation occurs and an immediate operation is necessary, while wholly excluding from compensation all other claims resting upon aggravation or acceleration of pre-existing herniæ and necessitating immediate operation but involving resulting conditions other than, yet equally as dangerous and potentially fatal as, strangulation.

2. In directing the enforcement, to bar the claims of petitioners, of the provisions of the hernia subsection of the act limiting the compensability of claims resting upon aggravation or acceleration of pre-existing herniæ to those cases where strangulation occurs and immediate operation is necessitated.

V.

ARGUMENT

In Providing that Claims resting upon Aggravation or Acceleration of Existing Herniæ shall be Compensable only when such Aggravation or Acceleration involves Strangulation requiring immediate operation, while wholly denying Compensation for all other Claims similarly resting upon Aggravation or Acceleration of Existing Herniæ and requiring immediate operation, the Hernia Subsection of the Workmen's Compensation Act of Maryland makes an Arbitrary Classification without basis in reason and altogether unrelated to any purpose of the Hernia Subsection or the the Act as a whole, and, consequently, unconstitutionally discriminates against, and denies the Equal Protection of the Laws to, Claimants in the Proscribed Class.

Petitioners do not question the state's power in its workmen's compensation act divisively to deal with claims for compensation for herniæ, or to constitute them a separate and special class requiring exceptional treatment different

from that accorded other injuries. The power exerted here, however, to deprive petitioners of all compensation and of all other right of recovery for a death concededly resulting proximately from an accidental injury in the course of extra-hazardous industrial employment, far transcends the boundary of permissible and valid classification. It has resulted in a rank and gross discrimination against petitioners.

Moreover, under the harsh and minority rule adopted in Maryland, as stated in *State, use of Wilson v. North East Fire Brick Co.*, 1942, 180 Md. 367, 371, the result of the exclusion under the act of benefits for the death of their deceased leaves petitioners with no remedy whatever at common law against his employer for its negligence causing his death.

After first specially classifying claims for compensation for herniæ the state subsequently, by means of subdivision and further classification, singled out for extraordinary treatment those claims resting on aggravation or acceleration of existing herniæ. As to these it has now made a further yet wholly illusory and irrational subclassification of cases where the aggravation involves technical strangulation and those where it does not. Claims in the first subdivision are made compensable, while those in the second are altogether excluded. Petitioners' claims were relegated to the barred class. It is conceded and stipulated as fact that it was medically impossible for their deceased's existing hernia to strangulate, and that the accidental injury he sustained necessitated an immediate operation from which he died.

To accomplish the denial of compensation here a new construction, in express reversal of its prior holding to the contrary, was placed by the court below on an amendment

adopted by the legislature in 1935 to the hernia subsection of the act. It is the application to this case of the 1935 amendment as thus newly construed which, we earnestly contend, has unconstitutionally denied petitioners the equal protection of the laws. To excise this abortive amendment of 1935 will not impair the efficacy of the act or affect the declared policy of the state in respect of pre-existing herniæ and their aggravation, as a brief view of the hernia subsection and its background in the act will disclose.

The original workmen's compensation law of Maryland, Acts of 1914, ch. 800, made no mention of herniæ. Consequently, when they occurred due to accidental injury arising out of and in the course of included employments, claims for compensation for resulting disability or death were compensable as other claims under the general provisions of the act. *Baber v. John C. Knipp & Son*, 1933, 164 Md. 55.

The first special provisions relating to claims for compensation for hernia, Acts of 1931, ch. 363, added several subparagraphs to the subsection of the act dealing with permanent partial disability. The added subparagraphs provided, *inter alia*, that compensation for hernia could be allowed only upon definite proof that the hernia did not exist prior to the injury for which compensation was claimed. Their purpose was declared to be "to restrict compensation for hernia to accidents noticed and reported at or about the time of their occurrence", *Lloyd v. Webster*, 1933, 165 Md. 574, 577.

However, claims resting upon *aggravation or acceleration of existing herniæ*, as distinguished from claims for compensation for herniæ, were not affected much less excluded by the 1931 amendment and remained compensable under the general provisions of the act, as other claims

resting upon aggravation or acceleration of existing disease or infirmity, until the decision in this case below expressly overruling *G. L. Baking Co. v. Wickham*, 1940, 178 Md. 381, 388, wherein that rule of compensability had been affirmed, and specifically declaring it to be otherwise.

The second statutory change relating to claims for compensation for herniæ, Acts of 1935, ch. 487, was an amendment of the hernia subparagraphs to the form they took (with the exception of the addition of the word "strain" by Acts of 1945, ch. 336) at the time of the accidental injury to the deceased here, June 12, 1947.* The 1935 amendment added to the subparagraph of the 1931 amendment

* The provisions relating to claims for compensation for herniæ, in effect at the time of the injury here, were codified as a separate subsection of the section of the statute dealing with claims, compensation and benefits. Art. 101, §35(5), Code of P.G.L. of Md. (Flack's 1947 Supp.). The subparagraph in question provided:

(5) In all claims for compensation for hernia, compensation may be allowed only upon definite proof to the satisfaction of the Commission.

* * *

Second. That the hernia did not exist prior to the injury or strain for which compensation is claimed; provided that if as the result of an accidental injury, or as the result of a strain, arising out of and in the course of the employee's employment a pre-existing hernia becomes so strangulated that an immediate operation is necessary, the provision of this sub-paragraph requiring proof that hernia did not exist prior to the injury for which compensation is claimed shall not apply.

By Acts of 1949, ch. 461, approved April 29, 1949, this subparagraph was further amended so as now to provide:

Second. That the hernia did not exist prior to the injury or strain for which compensation is claimed; provided that if as the result of an accidental injury, or as the result of a strain, arising out of and in the course of the employee's employment a pre-existing hernia becomes so strangulated, *incarcerated or becomes so aggravated* that an immediate operation is necessary, the provision of this sub-paragraph requiring proof that hernia did not exist prior to the injury for which compensation is claimed shall not apply.

requiring proof that the hernia did not pre-exist the injury a new proviso expressly waiving such proof in cases where aggravation or acceleration of existing herniæ involved their strangulation and necessitated immediate operation. In newly construing the subparagraph as amended in 1935 the court below in the instant case said:

“When the legislature, in 1935, specifically allowed recovery in cases involving the strangulation of pre-existing herniæ, it excluded recovery for aggravation or acceleration of pre-existing herniæ, short of strangulation, by necessary implication.”

The claims of petitioners were for compensation for death under the general provisions of the act, §§14 and 35(7), Article 101, and were not rested on the hernia subsection whose provisions only partially encompass situations where death occurs as a result of accidental injury causing hernia. Its provisions make no mention, for example, even of a death resulting from an accidental injury causing hernia which was not a pre-existing one. The only death made compensable by the hernia subsection in express terms is one *resulting from an operation* to treat in a surgical manner a hernia which did not pre-exist accidental injury or strain but resulted from one or the other. Death resulting from such operation is, in a succeeding subparagraph of the hernia subsection, expressly made compensable under the general provisions of the act. Death otherwise occurring, for example, one resulting from a hernia before an operation can be performed (*cf. Gulf States Creosoting Co. v. Walker*, 224 Ala. 104, 139 So. 261), is not compensable under the provisions of the hernia subsection. Such a death would not be compensable under the general provisions of the act because the hernia subsection has been held to apply to “all claims involving hernia” (*Bethlehem Steel Co. v. Zeigenfuss*, *supra*, 187 Md.

283), and when the legislature provided compensation for death resulting from a surgical operation to correct the hernia it excluded "by necessary implication" (18) recovery for deaths otherwise occurring. Therefore, dependents of such an employee would be denied all compensation. This, we respectfully submit, clearly demonstrates the iniquity of the manner in which the subsection has been construed and applied, and that it is so arbitrary, capricious and fundamentally unjust that it requires no further discussion to show its invalidity as herein contended.

It was petitioners' position below that their claims were not for a death resulting from the operation the hernia subsection refers to and requires, and consequently it did not and could not govern their claims since the facts were, as stipulated, that the deceased's death from cardiac collapse following his operation proximately resulted from an accidental injury aggravating or accelerating his existing infirmity of ventral hernia. Petitioners based their position on prior decisions of the court below affirming the rule of compensability under the general provisions of the act of claims resting on aggravation of existing herniæ, including *Baking Co. v. Wickham*, *supra*, (178 Md. 381, 388), where in 1940 the court below had affirmed the rule that if an accident "either accelerated an existing rupture or developed a strangulated hernia" it was compensable, and *Ross v. Smith*, 1935, 169 Md. 86, where the accident antedated the amendment of 1935, holding the hernia subsection inapplicable to a claim for resulting death, and the claim compensable under the general provisions of the act, where the aggravation of an existing hernia involved its strangulation.

In rejecting petitioners' position and expressly overruling its prior holding in the *Baking Company* case the court below applied the subparagraph containing the

strangulation proviso of 1935 to bar the claims and, as shown, construed the subparagraph as "excluding recovery for aggravation or acceleration of pre-existing herniæ, short of strangulation, by necessary implication." Thus although aggravation or acceleration involving strangulation and necessitating immediate operation is included and death resulting therefrom compensable, nevertheless, because the aggravation or acceleration of the deceased's existing hernia, while necessitating immediate operation, did not, as it could not, involve its strangulation, petitioners' claims were therefore, by force of the subparagraph as newly construed, relegated to the excluded class of claims resting upon aggravation or acceleration of pre-existing herniæ.

Thus the hernia subsection, under the construction and application of its subparagraph to bar petitioners' claims, divides into two classes all claims for compensation based on aggravation or acceleration of existing hernia by accidental injury or strain. On the one hand it commands the payment of compensation for those claims where the aggravation or acceleration involves strangulation necessitating immediate operation. On the other hand, as in the case at bar, it wholly excludes and denies compensation for those claims where the aggravation or acceleration of existing herniæ involves any resulting condition other than strangulation, albeit necessitating immediate operation and equally as disabling or potentially fatal as where strangulation occurs.

It is this discriminatory operation and application of the 1935 amendment to the subparagraph in question which has directly resulted in the denial to petitioners of the equal protection of the laws guaranteed them by the 14th Amendment. But for this unconstitutional construction of

the subparagraph, petitioners' claims are properly compensable under the general provisions of the act. And the excision of the invidious, as construed, proviso would leave unaffected the state's avowed policy and its legislative intent in respect of both pre-existing herniæ and their strangulation. *Cf.*, *Ross v. Smith*, *supra*, 169 Md. 86.

The hernia subsection, in specifying for divisive treatment all claims for compensation for herniæ, creates a special class of claims and injuries constituting an exception to the general coverage by the act of claims, injuries and disabilities. Petitioners raise no question of the power of the state to make that classification. They contend, however, that the state may not, consistently with the guaranty of the equal protection clause, provide by further division and sub-classification that claims resting upon aggravation of existing herniæ shall be compensable only when such aggravation takes the form of strangulation, and wholly non-compensable when the aggravation takes another form equally as disabling or potentially fatal as where strangulation occurs.

It is submitted to be obvious that the further classification thus made is discriminatory as being entirely without any basis in reason. From the aspect of workmen's compensation and the ends sought to be attained by statutes for its effectuation, there is not the slightest practical or logical difference or distinction between the two classes of aggravation or acceleration thus artificially created. They are intrinsically identical. A strangulated hernia is not a specific kind or type of hernia but one that has been aggravated or accelerated; it is merely a constricted hernia, which is but one condition of many equally critical conditions that may result from the aggravation or acceleration of many different kinds of herniæ. Herniæ resulting from

various causes, such as the incision hernia here (7), and in various stages of development, as that of the deceased here, cannot strangulate due to the peculiar physiological conditions of the protrusion, its size and position in the body, or the herniated tissue or muscle in their area, yet may and do strangulate when those conditions are different. To place a strangulated hernia in a class of its own, or to draw a line between strangulated herniæ and those otherwise affected by aggravation or acceleration, is to ignore or avoid concrete facts of medical science—to trifle in an unreal manner with anatomical realities. The only difference between the two classes of aggravation thus created is one of medical terminology.

The basic principle in respect of classification, often applied by this Court to various situations, is stated in *Louisville Gas & Electric Co. v. Coleman*, 277 U.S. 32, 37, as follows:

“* * * the equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances, * * * and that it applies to the exercise of all the powers of the state which can affect the individual or his property * * *. * * * the classification ‘must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.’ * * * That is to say, *mere* difference is not enough; the attempted classification ‘must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.’ * * * Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.”

In *Skinner v. Oklahoma*, 316 U.S. 535, in holding unconstitutional as contravening the equal protection clause of the 14th Amendment a criminal sterilization law which discriminatorily classified crimes for whose conviction sterilization was authorized by the state, the Court, through Mr. Justice Douglas, noted that:

"* * * the nature of the two crimes is intrinsically the same and they are punishable in the same manner. Furthermore, the line between them follows close distinctions—* * * The equal protection clause would indeed be a formula of empty words if such conspicuously artificial lines could be drawn."

The equally artificial line between the two supposed forms of aggravation disappears altogether when it is regarded from the view of medical science, with the result that the inequality of the subparagraph appears in bolder relief and the discrimination against petitioners by the application of this unequal law is more sharply etched. And when the alleged line of distinction fades the law must fall under the ban of the Constitution, for the guaranty of equal protection of the laws is a pledge of the protection of equal laws. *Yick Wo v. Hopkins*, 118 U.S. 356, 369. Again, it is not only the lack of distinction between classes but the want of relevance of the classification to the avowed ends of the statute that brands the subparagraph invalid. *Power Mfg. Co. v. Saunders*, 274 U.S. 490, 493-494; *Hartford Steam Boiler I. & Ins. Co. v. Harrison*, 301 U.S. 459, 461; *Kentucky Finance Corp. v. Paramount Auto Exchange Corp.*, 262 U.S. 544; *Cotting v. Godard, Atty. Gen.*, 183 U.S. 79. In *Truax v. Corrigan*, 257 U.S. 312, 338, the Court said:

"Classification * * * must regard real resemblances and real differences between things and persons, and class them in accordance with their pertinence to the purpose in hand."

Palpably this subclassification of aggravation or acceleration of existing herniæ has no relevancy whatever to any purpose of the hernia subsection and its ultimate design, much less to the salutary ends sought to be achieved by workmen's compensation regarded as a whole. As shown, the purpose of the hernia subsection was stated in *Lloyd v. Webster, supra*, 1933, 165 Md. 574, 576 (quoted with approval in *Bethlehem Steel Co. v. Zeigenfuss*, 1946, 187 Md. 283, 288), as follows:

"These special requirements in the Maryland statute are similar to those previously adopted in a number of other states,* to gain greater assurance that hernias compensated for have in fact resulted from accidental strains. The general provisions of the compensation statutes, it appears, had seemed to work unsatisfactorily, because previous accidental strains were sometimes inferred merely from the development of the hernias, when no strains had been reported or known. Occurrence of a strain would of course, be a fact peculiarly within the knowledge of the workman, and there could be no means of testing the truth of attribution of the hernias to strains if no strains had been reported at the time. * * *

"This court construes the Maryland statute as intended to restrict compensation for hernia to accidents noticed and reported at or about the time of their occurrence. Throughout the requirements quoted, the accidental injury from which the time for reporting is to run is distinguished from the hernia attributed to it. * * *

Thus the inquiry here must be directed to the crucial test of equality in law: Has the classification of resulting conditions or forms of aggravation of existing herniæ

* Maryland is the only state in the union whose workmen's compensation act contains a hernia provision limiting compensation for aggravation of existing herniæ to cases where such aggravation involves strangulation and necessitates immediate operation.

any reasonable relation, or is it germane, to any purpose of the hernia subsection as declared by the court below? Will the classification provide "greater assurance that hernias compensated for have in fact resulted from accidental strains"? Or, does the classification provide "means of testing the truth of attribution of the hernias to strains"? Or, does it tend "to restrict compensation for hernia to accidents noticed and reported at or about the time of their occurrence"?

The obvious irrelevancy of the classification of aggravation to any avowed purpose of the hernia subsection or the act itself compels the conclusion that the state has arbitrarily attempted to make of the word "strangulated", in its relation to pre-existing herniæ, a fetish, and to attribute to it the authority and potency of a concise and accurate formula. But when the state's action is viewed in the light of the considerations properly bearing upon the validity of its act it seems inescapable that the classification is wholly without reason and consequently arbitrary if not capricious. And the presumption of validity attaching to the statute cannot overcome the utter frivolity of the subparagraph in making strangulation of an existing hernia the sole touchstone of the compensability of its aggravation, particularly when such aggravation in other forms is as dangerous as strangulation and can and does, as here, result in death.

No basis for the attempted distinction between forms of aggravation appears anywhere in the act or in the opinion of the court below, unless the expression "short of strangulation" may be taken to imply the existence of a difference. If it may be inferred from that expression that the legislature, or the court below in its construction of its act, found ground for the classification in the supposition that strangu-

lation resulting from aggravation of an existing hernia is a more serious or dangerous condition physiologically or anatomically than are other results of such aggravation, the stipulated facts of the case at hand in themselves completely dissipate that supposition and reveal in clearer light the rank discrimination to which petitioners have been subjected by the application of the subparagraph to bar their claims.

The court below, in holding that the legislature excluded recovery "for aggravation or acceleration of pre-existing herniæ, short of strangulation", plainly recognized the medical fact, indisputable at all events, that strangulation of an existing hernia is but one form or species of condition out of many which can and often do result from its aggravation or acceleration by accidental injury or strain. The equally indisputable medical fact is that these resulting conditions other than strangulation are equally as disabling and potentially fatal as is the condition of strangulation. For it is also a fact, of which there has been judicial notice and determination,* that aggravation or acceleration of existing herniæ may cause innumerable other dangerous forms of specific injury, known in medical terminology by either a definite name, such as an "incarcerated" hernia as the subparagraph as now amended mentions, or by general characterization referable to the precise condition which results.

As mentioned, the conceded facts at bar furnish in themselves conclusive proof that forms of aggravation or acceleration of existing herniæ other than those resulting in strangulation are at least equally as disabling and serious as where strangulation alone results from accidental injury

* *Case of Harrington*, 285 Mass. 69, 188 N.E. 499; *National Auto. Insurance Co. v. Industrial Commission*, 139 Cal. App. 414, 34 P. 2d 163; *Staley v. Indianapolis Coal Co.*, 101 Ind. App. 335, 197 N.E. 713.

or strain. Other obvious instances could be multiplied indefinitely. For example, a watchman may be shot at the site of an existing inguinal hernia and the bullet pierce the protruding intestine without causing strangulation yet necessitating an immediate operation to effect its repair and save his life. Again, a worker may fall from a height and strike a sharp object with his body, piercing the protrusion of an existing epigastric or umbilical hernia, or any hernia of the *linea albae*, and causing an actual tear of the protruding bowel but no constriction as occurs in strangulation. Or the aggravation or acceleration may consist of any of the numerous forms or types of severe contusion, abrasion or laceration of the protruding organ or tissue, similarly as normal parts or unaffected organs of the human body may be so injured. Each of these is, as is strangulation, a form, condition or resulting involvement of aggravation or acceleration of existing herniæ, and would necessitate immediate operation to save life.

It is clear from all aspects, including those of nature and extent of injury and ensuing disability and possibility of fatal consequences, that there is no rational or valid line of difference and that none may be drawn between the resulting effects of strangulation of existing herniæ and their aggravation or acceleration in other respects necessitating an immediate operation. So that aside from the hernia subsection itself and the act as a whole, which, as is plain, furnish no foundation for the distinction which the state has here attempted to draw, there is not the slightest basis for inferring that the line of distinction drawn has any significance in any factor germane to the end and purpose of workmen's compensation.

What the state has here done is to lay an unequal hand on those who have sustained identical injuries, namely,

aggravation of existing herniæ, and to compensate one while barring others from all benefits.

Discrimination of this type is especially invidious in workmen's compensation statutes since they involve matters strongly affecting the public interest. Their constitutional validity was premised primarily on the social desirability that all cases of industrial injury, excepting those arising from self-inflicted injury, wilful misconduct, intoxication and the like, should be compensated in some degree, with both employer and employee conceding some rights and acquiring corresponding advantages.

When the workmen's compensation statutes were before this Court for the determination of their constitutional validity it was clearly contemplated that, other than in the mentioned instances where the injured or deceased employee himself occasioned his injuries, all disabilities and deaths resulting from accidental injuries arising out of and in the course of hazardous industrial employment were to be compensated. And in its construction of these acts this Court has always applied the rule that they are to be liberally interpreted in furtherance of the benign purposes for which they were enacted and so as to avoid incongruous or harsh results. *Industrial Comm. of Wisconsin v. McCartin*, 330 U.S. 622, 628; *Baltimore & Philadelphia Steamboat Co. v. Norton*, 284 U.S. 408, 414.

In *New York Central R. Co. v. White*, 243 U.S. 188, in sustaining the constitutional validity of the workmen's compensation statute of New York, the Court, speaking through Mr. Justice Pitney, said:

"* * * the statute under consideration sets aside one body of rules only to establish another system in its place. If the employee is no longer able to recover as much as before in case of being injured through the

employer's negligence, he is entitled to moderate compensation *in all cases of injury*, and has a certain and speedy remedy without the difficulty and expense of establishing negligence or proving the amount of the damages. * * * The act evidently is intended as a just settlement of a difficult problem, affecting one of the most important of social relations, and it is to be judged in its entirety. * * *

"* * * we recognize that the legislation under review * * * cannot be supported except on the ground that it is a *reasonable exercise* of the police power of the state."

In *Madera Sugar Pine Co. v. Industrial Acci. Comm. of Cal.*, 262 U.S. 499, in discussing the validity generally of workmen's compensation statutes, this Court, speaking through Mr. Justice Sanford, said:

"* * * These acts were sustained, in their entirety, * * * upon the broad ground that the state, by reason of its public interest in the safety and lives of employees engaged in such occupations, may provide, in the *just and reasonable exercise* of its police power, that the loss of earning power sustained by an employee through an industrial accident resulting in his disability or death, constituting a loss arising out of the business and an expense of its operation, shall, in effect, be charged against the industry after the manner of casualty insurance, and to that end require the employer to *make such compensation as may reasonably be prescribed* for the loss thus incurred in the common enterprise * * * to the injured employee or to his surviving dependents. * * *"

In *Mountain Timber Co. v. Washington*, 243 U.S. 219, in sustaining against attack based on the 14th Amendment the constitutionality of the workmen's compensation act of Washington, Mr. Justice Pitney, speaking for the Court, said:

"* * * * * Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if *within the sphere of its operation it affects alike all persons similarly situated*, is not within the Amendment.' * * * the considerations to which we have adverted in *New York C. R. Co. v. White, supra*, as showing that the Workmen's Compensation Law of New York is not to be deemed arbitrary and unreasonable *from the standpoint of natural justice*, are sufficient to support the State of Washington in concluding that the matter of compensation for accidental injuries with resulting loss of life or earning capacity of men employed in hazardous occupations is of sufficient public moment to justify making the entire matter of compensation a public concern * * *."

None of the statutes involved in those cases, nor other workmen's compensation enactments later coming before this Court for determination in particular respects, contained provisions singling out for special treatment claims for compensation for hernia, much less any provision such as contained in the subparagraph at bar by which it was attempted to deny by discriminatory classification claims resting upon aggravation of existing herniæ. In *New York Cent. R. Co. v. White, supra*, objection under the equal protection clause was made to the New York statute because of the exclusion from its coverage of farm laborers and domestic servants, and although the objection was not pressed the Court nevertheless discussed and disposed of it, saying that:

"manifestly this cannot be judicially declared to be an *arbitrary* classification, since it *reasonably* may be considered that the risks inherent in these occupations are exceptionally patent, simple, and familiar."

To apply the rule of "reasonableness" here is to perceive at once the total lack of reason or justification for excluding from all benefits certain claims for compensation for aggravation of existing herniæ merely because they do not meet the arbitrary if not capricious and frivolous test of technical strangulation. In other cases involving state workmen's compensation acts this Court, while uniformly rejecting objections to such acts based on the equal protection clause, nevertheless found in every case both reason and justification for various kinds of classifications made by the states in the exercise of their police power.

In *Jeffrey Mfg. Co. v. Blagg*, 235 U.S. 571, wherein the Ohio act was challenged as creating an arbitrary and unreasonable classification of employers and employees in exempting from compliance with the act employers of less than five employees, this Court overruled the challenge only after finding that the classification was actuated by and based upon fair and reasonable considerations. In *Hawkins v. Bleakly*, 243 U.S. 210, where an employer contended he was denied the equal protection of the laws by a provision of the Iowa act, an elective statute, leaving his liability unaffected by an injured employee's rejection of the act, this Court, speaking through Mr. Justice Pitney, sustained the act because:

"* * * We cannot say that there is here an arbitrary classification within the inhibition of the 'equal protection' clause of the 14th Amendment. All employers are treated alike, and so are all employees; * * * and the legislation cannot be condemned when that (police) power has been qualifiedly exercised, without unreasonable discrimination."

In *Middleton v. Texas Power & Light Co.*, 249 U.S. 152, in sustaining against an employee's attack, as violating the equal protection clause, a provision of the Texas act ex-

cluding from its coverage persons in specified vocations, this Court, in holding that the classification of employees was not arbitrary or unreasonable, stated that "in this case adequate grounds (for the classification) are easily discerned," and pointed out the specific grounds of and stated the reasons for each of the exclusions. Continuing, the Court, through Mr. Justice Pitney, said (p. 162):

"* * * in order that the new scheme of compensation should be a success, the Legislature deemed it proper, if not essential, that the payment of compensation to the injured employes or their dependents should be rendered secure * * * by a system of compensation insurance in which it was deemed important that all employees of a given employer should be treated alike. Still further there are reasons affecting the contentment of the employes and the discipline of the force, rendering it desirable that all serving under a common employer should be subject to a single rule as to compensation in the event of injury or death arising in the course of the employment. * * *"

In *Arizona Copper Co. v. Hammer*, 250 U.S. 400, in stating the underlying reasons for holding valid the Arizona Employers' Liability act under the due process and equal protection clauses of the 14th Amendment, the Court emphasized that a state could recognize or establish "a right of action for compensation to injured workmen upon grounds not arbitrary or fundamentally unjust," and speaking through Mr. Justice Pitney said:

"The rule being based upon reasonable grounds affecting the public interest, being established in advance and applicable to all alike under similar circumstances, there is, in our opinion, no infringement of the fundamental rights protected by the Fourteenth Amendment."

And in *New York Central R. Co. v. Bianc*, 250 U.S. 596, wherein employers claimed violation of due process by a provision of the New York act authorizing awards of compensation for disfigurement in circumstances claimed to be irrelevant to impairment of earning power, this Court sustained the act because the result achieved was "not inconsistent with fundamental rights" and the provision "not unreasonable, arbitrary or contrary to fundamental right."

See also:

R. E. Sheehan Co. v. Shuler, 265 U.S. 371;
Staten Is. R. T. Co. v. Phoenix Indemnity Co.,
 281 U.S. 98;
Ward & Gow v. Krinsky, 259 U.S. 503.

This Court, in thus sustaining the validity of workmen's compensation laws, implied no sanction to the exercise of state power to whittle down by means of invidious classification and discriminatory exclusion the reciprocal benefits which these statutes give employees in return for their yielding up of many of their existing rights. State power to enact and apply exclusionary provisions relating to claims for compensation for herniæ has never been determined much less admitted by this Court, yet the assumption that it exists carries with it no implication that the state may employ it to exclude from all benefits a large segment of claims for compensation with which herniæ may be but remotely involved.

Whether or not actuated by an impulse "to insulate the employer as much as possible from bearing the 'human overhead' which is an inevitable part of the cost—to some one—of the doing of industrialized business" (*cf.*, *Tiller v. Atlantic Coast Line R. Co.*, 318 U.S. 54, 59), there has nevertheless been permitted to creep into the Maryland act a malignant provision which, by a process of discrim-

inatory classification, effectively discompensates a substantial if not the greater part of all claims resting upon *aggravation or acceleration* of existing herniæ. And this under the guise of an ostensible purpose "to restrict *compensation for hernia* to accidents noticed at or about the time of their occurrence."

CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Honorable Court of its powers of review, under the authority hereinabove cited, and that to such an end a writ of certiorari should be granted and this Honorable Court should review the decision of the Court of Appeals of Maryland and finally reverse it.

Respectfully submitted,

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Baltimore, Maryland,
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